IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2007

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.No.21798 of 2000

The Secretary to Government,
State of Tamil Nadu,
Environment and Forests Department,
Fort St. George, Chennai-9. ... Petitioner

Versus

1. M/s.Subam Auto Finance Co.,
rep. By Mr.Palanisamy,
Oddanchatiram.

2.The Principal Sessions Judge,
Villupuram. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, to call for the records in Crl.A.No.1 of 1998, dated 07.08.2000 on the file of the second respondent and quash the same.
For Petitioner : Mr. K.Rajasekar,
Government Advocate

For 1st Respondent : Mr. C.Palanaisamy

O R D E R
State is the petitioner herein. The judgment in Crl.A.No.1 of 1998, dated 07.08.2000 passed by the second respondent, setting aside the confiscation of the vehicle involved in a forest offence is under challenge.
2. Brief facts leading to the Writ Petition are as follows:
On 03.09.1997, around 1.30 a.m., near Ulunderpet Government Transport Depot on the Highways of Trichy to Chennai, the Forest Officials while patrolling, seized a Mini Lorry DCK Toyota bearing Registration No.TN-59-7370 for transporting 907.500 kgs of Sandalwood, which is a schedule timber without any valid licence or permit as per Section 41 of the Tamil Nadu Forest Ac, 1882 (in short as "the Act"). The offence was registered in STOR.No.5 of 1997 under Section 36(A) and 36(B) of the said Act. The vehicle along with the other seized materials were produced before the Authorised Officer for further proceedings as contemplated under the said Act. During investigation by the Ranger and Forest Officials of Ulunderpet, it was found that the owner of the vehicle was one Mr.Singaram of Palani in Dindigul District and he was enquired on 04.09.1997. The said Singaram gave a statement on the same day, stating that on 25.08.1997, his vehicle DCM TOYOTA bearing Registration No.TN-59-7370 was hired by Mr.Karimal, S/o. Thangavel, Ganesan, S/o.Sangilithevar and Velan @ Velusamy, S/o.Subramani for transporting sandalwood unlawfully for which the hire charge was fixed at Rs.30,0000./- and he received a sum of Rs.5,00/- as advance. On further enquiry the statement given by Mr.Singaram was confirmed by the Transportor, Mr.K.Iyyappan of Gandhi

Road, Palani.

3. It is further submitted that the transport of sandalwood which is a schedule timber without valid permit is an offence under the Act and therefore, a show cause notice was issued to the registered owner, Mr.Singaram vide C.No.6841/97(L) dated 12.09.1997, calling for his objections, if any for confiscation of the vehicle. A similar show cause notice was sent to the first respondent, financier, on 15.101997 and his objections were called for. The Registered owner received the notice on 12.09.1997 and submitted his explanation on 26.09.1997, stating that the vehicle was used by some other person for smuggling sandalwood. The first respondent received the show cause notice on 16.10.1997 and offered his explanation on 21.10.1997. The explanation submitted by both the registered owner and the fiancier were considered along with the materials on record by the Authorised Officer and by order dated 13.11.1997, the Authorised Officer ordered confisication of the vehicle as well as the sandalwood. Against the order of confiscation, the owner of the vehicle did not file any appeal. The first respondent, viz., the fiancier filed an appeal in C.A.No.1 of 1998, under Section 49-D of the Act before the Learned Principal Session Judge, Villupuram and the appellate authority, without considering the provision of law in proper perspective and the points raised, set aside the confiscation order with regard to the vehicle and allowed the appeal, by his order dated 07.08.2000. The said order is impugned in this Writ Petition. According to the petitioner, after confisication, the vehicle is vested with the Government, who is the owner of the vehicle and therefore, the Government is aggrieved by the order of the Principal Sessions Judge.

4. Mr.Rajasekar, learned counsel for the petitioner submitted that the financier is not a registered owner of the vehicle in terms of the Motor Vehicle Act, he cannot have any interest over the vehicle, except for the payment made by them and if at all there is any amount due, the financier can take appropriate steps to recover the amount from the registered owner. He further submitted that the appellate authority had failed to consider that the registered owner of the vehicle, Mr.Singaram, had given a confession statement dated 04.09.1999, admitting that the offence had taken place with his knowledge and connivance. He further submitted that as the confession statement has not been retracted by the owner of the vehicle, the same is binding on the owner of the vehicle as well as the financier. When the registered owner has not challenged the finding rendered by the Authorised Officer, it is not open to the financier to challenge the same merely because, the owner was not arrayed as an accused in the criminal case. He further submitted that criminal proceedings and confiscation are two distinct proceedings and one has no relevance to the other.
5. Learned counsel for the petitioner further submitted that neither the registered owner nor the financier denied the commission of offence and involvement of the vehicle in the commission of offence. According to the petitioner, apart from knowledge or connivance of the owner, law contemplates that the owner or his agent if any, or person in charge of the vehicle, each of them have to take reaonsble and necessary precautions against the use of the vehicle in the commission of offence and when there is sufficient evidence for confiscation, the appellate authority erred in mis-interpreting the provision and released the vehicle. He further submitted that if the findings of the appellate authority are to be accepted and confirmed, then forest offenders and smugglers will purposefully hypothecate the vehicle to a financier and in all cases, the financier may not have any personal knowledge or connivance with the offender and in which case, the purpose for legislating a specific provision for confisication would be defeated.

6. Learned counsel for the petitioner further submitted that the appellate authority has erred in holding that the registered owner of the vehicle is innocent and has no knowledge about the offence merely because he was not impleaded as an accused in the criminal case. He further submitted that as confiscation and criminal proceedings are entirely different, registration of criminal case against the owner of the vehicle is not a requisite for confiscating forest produce, vehicle or materials used in the commission of offence.

7. On the other hand, Mr.C.P.Palanisamy, learned counsel appearing for the first respondent submitted that the financier having parted with the money for the vehicle is an aggrieved person and therefore can maintain an appeal before the appellate authority. He further submitted that the fact that the owner was not impleaded as an accused in the Criminal case itself is a proof that if the owner had no knowledge or connivance in the commission of offence. The signatures of the owner and his statement have been obtained only for the purpose of confiscation of the vehicle and therefore, the appellate authority had rightly held that the owner of the vehicle had no knowledge of the commission of offence and under such circumstances, the first respondent, being the hire purchase agreement holder is entitled to the release of the vehicle.

Heard the counsel appearing for the parties and perused the materials available on record.

8. Before dealing with the facts of the case on hand, I would like extract the views of the Supreme Court and this Court as to how the Courts/Forest Officials have to deal with the matter relating to the release of the vehicle seized for committing the forest offence. Though the first judgment relates to a case of release of the vehicle before culminating into the confiscation proceedings, the principles stated in the judgment would be relevant for the purpose of adjudication of the case on hand.

9. In State of Karnataka v. K.Krishnan reported in AIR 2000 SC 2729, while dealing with a release of vehicle involved in the Forest case, the Supreme Court in Para 7, held as follows:
"The provisions of the Act are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence, the Authorised Officer or the Appellate Authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produce and the tools, boats, vehicles, cattles etc., used in the commission of the forest offence, which are liable to forfeiture, should not be released. This however, does not debar the officers and the authorities under the Act including the Appellate Authority to pass appropriate orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother-earth and the atmosphere surrounding it. The Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a Court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that the release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come."

10. In yet another decision in Divisional Forest Officer v. G.V.Sudhakar Rao reported in AIR 1986 SC 328, the Supreme Court considered the scope and effect of Section 44(2A) of the Andra Pradesh Forest Act, when the High Court under Section 482 Cr.P.C., stayed the confiscation proceedings initiated under Section 44(2A) of the Forest Act. The Apex Court, while dealing with the power of the

Forest Officer for confiscation of the vehicle, vis-a-vis, the Magistrate held that the confiscation of the vehicle carrying timber, goods forming the subject matter is not depended upon whether prosecution of the commission of Forest offence has been launched against the offender or not. At Para 3 to 5, the Supreme Court dealt with the above issue as follows:

"3.. The precise question that falls for determination is whether where a Forest Officer makes a report of seizure of any timber or forest produce and produces the seized property along with a report under Section 44(2) that he has reason to believe that a forest offence has been committed in respect of such timber or forest produce seized, can there simultaneously be proceedings for confiscation to Government of such timber or forest produce and the implements etc. by the Authorized Officer under Section 44(2A) of the Act if he is satisfied that a forest offence has been committed, along with a criminal case instituted on a complaint by the Forest Officer before a Magistrate of the commission of a forest offence under Section 20 of the Act. The appeal turns upon a proper construction of Sections 44(2), 44(2A) and 45 of the Act, as amended by Act 17 of 1976.

4. In order to deal with the question involved, it is necessary to refer to the statutory changes brought about. The Act, prior to its amendment by Act 17 of 1976 provided by Section 44 insofar as material, as follows:

""44(1) Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing, any such offence, may be seized by any forest officer or police officer.

(2) Every officer seizing any property under this Section shall place on such property, or the receptacle, if any, in which it is contained a mark indicating that the same has been so seized and shall, except where the offender agrees in writing forthwith to get the offence compounded, make a report of such seizure to the magistrate:

Provided that where the timber or forest produce with respect to which such offence is believed to have been committed is the property of the Central or State Government and the offender is not known, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to the Divisional Forest Officer.

(3) *** *** *** ***

(4) *** *** *** ***

(5) The property seized under this section, shall be kept in the custody of the forest officer not below the rank of a Forest Guard or the village headman until the compensation for compounding the offence is paid or until an order of the magistrate directing its disposal is received.

Section 45 of the Act, prior to its amendment, was in these terms:

45. Where a person is convicted of a forest offence, the court sentencing him shall order confiscation to the Government of timber or forest produce in respect of which such offence was committed and of any tool, boat, vehicle other than a cart drawn by animals, vessel or other conveyance or any other article used in committing such offence.""

After extracting the relevant provisions, the Apex Court dealt with the scope and nature of proceedings initiated for confiscation of the vehicle and criminal action taken against the offenders and held as follows:

"5. The change in the law was brought about with a view to prevent the growing menace of ruthless exploitation of Government forests by illicit felling of teak and other valuable forest produce by unscrupulous traders, particularly from the reserved forests by providing for a machinery for confiscation of illegally felled trees or forest produce by the Forest authorities. Under Section 45 of the Act as it then stood, where a person was convicted of a forest offence, the Court sentencing him was empowered to order confiscation to the Government of timber or forest produce in respect of which a forest offence was committed and of any tool, boat, vehicle other than a cart draw by animals, vessel or other conveyance or any other article used in committing such offence. Although there was a provision for seizure of such articles in Section 44 of the Act, there was no provision in

the Act enabling the forest officers to confiscate such timber or forest produce and the implements etc. used for committing forest offences even in a case where he was satisfied that a forest offence had been committed. In view of this, the Forest Department was finding it difficult to curb the forest offences effectively and quickly inspite of the fact that large scale felling and smuggling of forest produce was on the increase. Hence it was thought necessary to empower the officials of the Forest Department seizing any property under Sub-section (1) of Section 44, instead of merely making a report of the seizure to a Magistrate, also to order confiscation of timber or forest produce seized together will all the tools, boats, vehicles etc. used in committing such offence. Statement of Objects and Reasons:

The intendment of the Legislature in enacting Act 17 of 1976 was therefore to provide for two separate proceedings before two independent forums in the Act, one, for confiscation by a departmental authority exercising quasi-judicial powers conferred under Sub-section (2A) of Section 44 of the goods forming the subject-matter of the offence, and the other for the trial of the person accused of the offence so committed. It brought about the following changes, namely, : (1) In Sub-section (2) of Section 44 of the Act in the opening paragraph, for the words "make a report of such seizure to the magistrate:", the following words and brackets were substituted, namely:

Without any unreasonable delay either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorized by the Government in this behalf by notification (hereinafter referred to as the authorized officer) or make a report of such seizure to the magistrate:

(2) After Sub-section (2), Sub-Sections (2A), (2B), (2C), (2D) and (2E) were inserted. Sub-section (2A), which is material for our purposes, provides:

(2A) Where an authorized officer seizes under Sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under Sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.

Sub-section (2B) enjoins that no order confiscating any property shall be made under Sub-section (2A) unless the person from whom the property is seized is given (a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property; (b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and (c) a reasonable opportunity of being heard in the matter. Sub-section (20) provides that without prejudice to the provisions in Sub-section (2B), no order of confiscation under Sub-section (2A) of any tool, rope, chain, boat or vehicle shall be made after the owner thereof proves to the satisfaction of the Authorized Officer that it was used in carrying the property without his knowledge or connivance, or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope, chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use. Sub-section (2D) confers power on an Authorized Officer not below the rank of a Conservator of Forests empowered by the Government in that behalf, may within 30 days of the date of the order of confiscation by the Authoirzed Officer under Sub-section (2A), either suo motu or on an application call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and pass such orders as he may think fit. Proviso thereto enjoins that no order prejudicial to any person shall be passed without giving him an opportunity of being heard. Sub-section (2E) confers a right of appeal to the person aggrieved by an order passed under Sub-section (2A) or Sub-section (2D). Such an appeal had to be preferred within 30 days from the date of communication to him of such order, to the District Court having jurisdiction over the area in which the property had been seized. The District Court was conferred the power after giving an opportunity to the parties to be heard, to pass such order as it may think fit and the order of the District Court so passed shall be final."

11. In State of W.B. v. Sujit Kumar Rana reported in 2004 (4) SCC 129, the Supreme Court, while

dealing with a similar provision for confiscation under the West Bengal Forest Act, at Paragraph 21, held as follows:
"The State Legislature of West Bengal has inserted the said provisions (relating to the seizure and confiscation) with a laudable object. Forest is a national wealth which is required to be preserved. In most of the cases, the State is the owner of the forests and forest produce. Depletion of forests would lead to ecological imbalance. It is now settled that the State is enjoined with a duty to preserve the forests so as to maintain ecological balance and, thus, with a view to achieve the said object forests must be given due protection. Statutes which provide for protection of forests to maintain ecological balance should receive liberal construction at the hands of superior Courts. Interpretive exercise of such power should be in consonance with the provisions of such statutes not only having regard to the principle of purposive construction so as to give effect to the aim and object of the legislature; keeping the principles contained in Articles 48-A and 51-A(g) of the Constitution of India in mind. The provisions for confiscation have been made as a deterrent object so that felling of trees and deforestation is not made."

In the above reported case, confiscation proceedings were pending before the Authorised Officer under the Forest Act. The High Court in exercise of its power under Section 482 Cr.P.C., released the vehicle involved in the Forest offence. The Supreme Court held that although the Criminal Court indisputably has a jurisdiction to deal with the property which is the subject matter of offence in terms of the provisions of the Code of Criminal Procedure, but once the confiscation proceedings are initiated, the said provision under Section 482 of the Criminal Procedure Code, cannot be exercised by the Magistrate. At Paragraph 34 and 43 of the judgment, the Supreme Court held as follows:
"An order of confiscation in respect of a property must be distinguished from an order of forfeiture thereof. Although the effect of both confiscation and forfeiture of a property may be the same, namely, that the property would vest in the State but the nature of such order having regard to the statutory scheme must be held to be different. A proceeding for confiscation can be initiated irrespective of the fact as to whether prosecution for commission of a forest offence has been lodged or not. A confiscation proceeding, therefore, is independent of a criminal proceeding. A confiscation envisages a civil liability whereas an order of forfeiture of the forest produce must be preceded by a judgment of conviction."

12. In yet another decision in State of Bihar v. Kedar Sao reported in 2004 (9) SCC 344, the Supreme Court observed that the provision of seizure and its procedure for confiscation as contained in Section 52 of the Indian Forest Act, as amended by Bihar Amendment Act 9 of 1990 were made having regard to the fact that not only the commission of forest offences are on the increase but rampant acts involving large-scale pilferage and depletion of forest wealth not only causing serious onslaught on the nature and environment causing ecological imbalance and irreparable loss and damage to public property, were taking place and the States, therefore, had to take such drastic legislative measures with a view to prevent commission of such offences.
13. In M/s.Ashok Leyland Finance v. Government of Andra Pradesh reported in AIR 2001 AP 270, the Division Bench of the Andra Pradesh High Court Court has considered whether a finance company claimed to be a hire purchaser can be considered as owner of the vehicle and if so, whether the finance company had discharged the burden envisaged in Section 41(2C) of the Andra Pradesh Forest Act for release of the vehicle, solely on the ground that the vehicle was used for transporting the contraband of produce without his knowledge and connivance, etc. At Paragraph 9 of the judgment, the Court has discussed the issue and held as follows:

"9. This takes us to the next question whether the appellant-company can be considered to be the owner of the vehicle and if so, whether it has discharged the burden envisaged under sub-section (2-C) of Section 44 of the Act."
Sub-section (2-C) of Section 44 reads:

"(2-C) Without prejudice to the provisions of sub-section (2-B), no order of confiscation under sub-section (2-A) of any tool, rope, chain, boat or vehicle shall be made if the owner thereof proves to the satisfaction of the authorized officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use."
Sub-section (2-C) among other things provides that no order of confiscation under sub-section (2-A) shall be made if the owner of the vehicle proves to the satisfaction of the Authorised Officer that the vehicle was used in carrying the contraband forest produce without his knowledge or connivance. The Forest Act does not define the term "owner". Section 2(30) of the Motor Vehicles Act, 1988 (Section 219 of the Motor Vehicle Act, 1939), defines the term "owner". It reads:
Sub-section (30): "owner" means a person in whose name a motor vehicle stands registered, and where such a person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.";
Therefore, it is quite clear that if a vehicle is the subject-matter of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement will be the owner within the meaning of the definition. In the instant case, it has come in evidence that the hirer C. Venkateswarlu was in actual possession of the motor vehicle since the beginning of the purchase of the vehicle. Since the Forest Act does not define the term "owner" and since Section 44(2-C) of the Forest Act refers to the owner of the vehicle, it is appropriate that the definition of the "owner" defined under Section 2(30) of the Motor Vehicles Act, 1988 should be kept in mind in construing the provisions of sub-section (2-C) of Section 44 of the Act. If it is so kept in mind the financier cannot be considered to be the owner of the vehicle for the purpose of Section 44(2-C) of the Act. Therefore, the financier, solely on the ground that the vehicle was used for transporting the contraband forest produce without his knowledge or connivance, cannot seek the release of the vehicle irrespective of the fact whether the forest offence was committed with the knowledge or connivance of the hirer. Further, the provisions of sub-section (2-C) makes it abundantly clear that the burden to prove to the satisfaction of the Authorised Officer that the vehicle was used in carrying the contraband forest produce without his knowledge or connivance is on the owner of the vehicle and not on the Authorised Officer. Therefore, we do not find any merit in the contention of the learned counsel for the appellant that there is absolutely no legal evidence produced by the Authorised Officer to show that the vehicle was used for carrying the contraband forest produce with the knowledge and connivance of the hirer or the financier."

14. The Division Bench of this Court in W.A.No.1296 of 1995, dated 04.12.1995, considered the extent of burden to be discharged by the persons mentioned in Section 49-B of the Tamil Nadu Forest Act, so as to enable the owner to get the release of the vehicle. After extracting Section 49-B of the Forest Act, this Court at Paragraph 5 of the judgment held as follows:
"5. In our view, the proviso to Section 49-B of the Act has not been properly and correctly applied to the facts and circumstances of the present case. Section 49-B of the Act reads as follows:
""49-B. Issue of show cause notice before confiscation under Section 49-A(1) No order confiscating any scheduled timber, or tools, ropes, chains, boats, vehicles or cattle shall be made under Section 49-A except after notice in writing to the person from whom it is seized informing him of the grounds on which it is proposed to confiscate it and considering his objections, if any:
Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if, in the opinion of the authorised officer, it is practicable to do so and considering his objections, if any.
Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under Section 49-A, if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying

scheduled timber without the knowledge or connivance of the owner himself, his agent, if any, on the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had takes all reasonable and necessary precautions against such use.""
The latter portion of the proviso places burden upon the owner of the vehicle. It is not enough for the owner of the vehicle to prove that the vehicle was used without his knowledge or connivance. He is also further required to prove that the agent or the driver under whose possession, the vehicle was being kept, had taken all reasonable and necessary precautions against such use. In the instant case, it is not in dispute that the vehicle was seized when it was transporting illegally sandalwood. In such cases the aforesaid proviso comes into operation. The burden shifts on the owner of the vehicle to prove by convincing evidence that not only he had no knowledge of or had not connived with the use of the vehicle for illegal purpose, but his agent or the person in charge of the vehicle had taken all the reasonable and necessary precautions against such use. The owner has not adduced any evidence to show that the driver of the vehicle took necessary and reasonable precautions to prevent the use of the vehicle for illegally transporting the sandalwood. The fact that the driver was in the custody of the Police, did not in any way prevent the owner to examine him and to adduce any other evidence to prove that reasonable and necessary precautions were taken by the person in charge of the vehicle. The object of the proviso is to ensure that the owner of the vehicle does not escape by merely pointing out that he had no knowledge. He being the owner of the vehicle, it is his responsibility to ensure that not only he himself had taken care to see that the vehicle was not used for any unauthorised purpose, but also the person placed in charge of the vehicle did not use the vehicle, allowed it to be used or connived at use for such purpose. This provision of law requires to be scrupulously observed in order to prevent the smuggling of sandalwood. Therefore, we are of the view that the Prescribed Authority and the learned Single Judge have not taken into consideration the true and correct scope and ambit of the proviso to Section 49-B of the Act. That being so, the order of the Prescribed Authority cannot be sustained. Consequently, the order of the single Judge has to be set aside."

15. Following the decision rendered in W.A.No.1296 of 1995, dated 14.12.1995, another Division Bench of this Court in The State of Tamil Nadu v. A.K.Raju reported in 2005 (1) MLJ 448, has compared the extent of burden to be discharged by the owner of the vehicle under Sections 49-A and 49-B of the Tamil Forest Act and at Paragraph 7.3 held that,
"burden is fastened on the owner to prove that he had no knowledge of using the vehicle for the impugned Forest Act and also to prove that he, his agent if any, person in charge of the vehicle, have taken all reasonable and necessary precautions against such use of the vehicle for committing the alleged forest offence, no such liability is fastened on the owner of the vehicle to discharge his burden under Section 52 of the Indian Forest Act."

In the above judgment, at Paragraph 9, the Division Bench has further held that,
"the owner of the vehicle had not discharged his burden to prove by convincing evidence that not only he had no knowledge nor had not connived with the use of the vehicle for illegal purpose, but his agent or the person in charge of the vehicle had also taken all the reasonable and necessary precautions against such use. The owner has not adduced any evidence to show that the driver of the vehicle took necessary and reasonable precautions to prevent the use of the vehicle for illegally transporting the sandalwood."

16. In S.Gowri v. The Assistant Conservator of Forest Prosecution Squad & another reported in 2004 Writ.L.R., 53, this Court considered the plea of the owner of the vehicle that he had no knowledge and not connived in the commission of offence. In the reported judgment, the vehicle was purchased with help of loan granted by the TIIC. The vehicle was booked by the driver and since the vehicle did not return, the petitioner after ascertaining the address of the person, who had booked the vehicle,

lodged a compliant before the Police. Subsequently, she came to learn that the vehicle had been seized by the Forest Department on the allegation that sandalwood was smuggled in the vehicle and when she received the notice under Section 49A of the Tamil Nadu Forest Act, as to why the vehicle should not be confiscated, the owner submitted a reply stating that she was not directly aware of the person who had taken the vehicle on hire and she had no knowledge or connived in the forest offence. It was contention of the owner that the driver was solely responsible for whatever happened. The driver of the vehicle made a statement before the authorised officer to the effect that he got permission from the owner to transport sandalwood. Subsequently, on receipt of the notice regarding the enquiry under Section 49(B) of the Act, the driver made a further statement in writing that the owner of the vehicle did not have any connection in illegal transportation of sandalwood and that the person who had hired the vehicle did not meet the owner. In other words, on the basis of the retracted statement of the driver, the owner had contended before the appellate authority that he had no knowledge or connived in the commission of offence. The confiscation ordered by the authorised forest officer under the Act was confirmed by the appellate authority.

17. While considering the correctness of the orders, in the above factual background, following the Division Bench judgment in W.A.No.1296 of 1995, dated 04.12.1995, learned single Judge at Paragraph 9 held as follows:
"In view of the aforesaid analysis of the procedures by the Division Bench, which is binding on me, even accepting in toto the subsequent statement of the driver, the order of confiscation passed by the Authorised Officer and confirmed by the Appellate Authority cannot be said to be illegal. From the subsequent statement of the driver, it is apparent that the driver had knowledge in the commission of the offence and it is further apparent that he had not taken all reasonable steps to prevent the commission of the offence. Therefore, even assuming that the owner was unaware of the commission of the offence and has not connived in the commission of offence, since the driver was aware of such illegal user of the vehicle, the vehicle was liable to be confiscated."

18. In the case on hand, it is not in dispute that on 03.09.1997, when the Forest Officials, Ulundarpet, intercepted the vehicle, the driver and another person stopped the vehicle and fled away from the scene. Sandalwood weighing 907.500 kgs to the worth of Rs.1,50,000/- was seized. The seized materials and the vehicle were produced to the Authorised Officer on the same day. During investigation, it was found that the owner of the vehicle was one Singaram of Dindigul District and that on 04.09.1997, he had given a statement, admitting that his vehicle was involved in the unlawful activity of transporting sandalwood for higher charges offered by the offenders. The Transporter, Thiru.Iyyappan, of Palani, Didndigul District has also given a statement on 04.09.1997, endorsing that the vehicle was hired to Thiru.Karimal S/o.Kandavel, Ganesan, S/o.Sangili and Velan S/o. Subramani for the purpose of transporting sandalwood. Notice was issued by the authorised Officer to the registered owner of the vehicle and also to the first respondent. Explanations submitted by the registered owner of the vehicle and the Financier, M/s.Subam Auto Finance, were considered by the authorised Officer along with the connected records and the statement of the registered owner of the vehicle, Singaram to the effect that the the said Karimal had engaged the vehicle and offered him Rs.30,000/- as a final settlement for transporting one tonne of Sandalwood for Thiruvannamalai to Kerala and paid an advance of Rs.5,000/-. Before the Authorised Officer, the financier submitted that he was not aware of the fact that the vehicle was hired to Karimal for transporting Sandalwood. On consideration of the evidence on record, the Authorised Officer ordered confiscation of the vehicle and the Forest produce under Section 49-A of the Act.

19. In Criminal Appeal No.1 of 1998, the learned Principal Sessions Judge, Villupuram, by his judgment dated 07.08.2000, set aside the order of confiscation and directed the department to release the vehicle. The reasons for release of the vehicle are:
Though the authorised Officer had come to the conclusion that Singaram had knowledge with regard

to transporting sandalwood, no explanation was given as to why he was not implicated as an accused in the criminal case. The appellate authority proceeded on the footing that the signatures obtained and statements recorded by the officials were to suit the circumstances, which enable them to confiscate the vehicle. On that basis, the learned Judge found that Singaram had no knowledge of the commission of offence and therefore, held that the vehicle cannot be confiscated under Section 49A of the Act. The first respondent under hire purchase agreement was deemed to be the owner under law and therefore, entitled to release of the vehicle.

20. As per Section 49A of the Act, where a forest offence is believed to have been committed in respect of any schedule timber, which is the property of the Government, the Officer seizing the property under Sub-Section (1) of Section 41, shall, without any unreasonable delay, produce it together with all tools, vehicles, etc., used in committing such offence, before an officer and where the Authorised Officer siezes any schedule timber, which is the property of the Government and if he is satisfied with the Forest offence has been committed in respect of such property, such authorised officer, may, whether or not a prosecution is instituted for committing such forest offence can order confiscation of the property so seized together with all tools, ropes, vehicles etc., used in committing such offence.

21. Section 49-B of the Act consists of two parts, viz., (1) the owner of the tool, ropes, chains, boats, vehicles or cattle should prove to the satisfaction of the authorised officer that the vehicle was used in carrying timber without his knowledge or connivence of the owner himself, his agent, if any and the person incharge of the vehicle and (2) Each of them had taken all reasonable and necessary precautions against such use. The heavy burden cast on the owner is not restricted or confined only to the limited extent of placing materials that he had no knowledge of the commission of offence or connived with the offender. But he has to prove with tangible and convincing evidence that he has no knowledge that the vehicle was used for illegal purpose, and his agent, or person in charge of the vehicle had taken all reasonable and necessary precautions against such use.

22. The said Section envisages both the criminal prosecution as well as initiation of confiscation proceedings. Prosecution launched for the purpose of punishing the offenders, whereas, the object of confiscation is to declare that the property, used in the commission of an offence, as the Government property and the two proceedings are entirely different. Authorised officer can initiate criminal proceedings, if there are sufficient information and evidence available on record. If the facts and evidence unearthed by him, during the course of investigation are not sufficient to bring home the culpability of the owner, then trying the owner before the criminal Court would be futile exercise and harassment. Criminal proceedings is for the offence committed by the driver or owner or any person in charge of the owner, provided there is mens rea. Whereas the object of confiscation is to adjudicate with regard to confiscation of the forest produce and means used in the commission of offence. Confiscation proceedings initiated under the Act is a quasi-judicial proceedings initiated on the basis of the satisfaction of the Authorised Officer.

23. The heavy burden cast on the owner is not restricted or confined only to the limited extent of placing materials that he had no knowledge of the commission of offence or connived with the offender. But he has to prove with tangible and convincing evidence that he has no knowledge that the vehicle was used for illegal purpose, and his agent, or person in charge of the vehicle had taken all reasonable and necessary precautions against such use.

24. As held by the Division Bench of this Court in W.A.No.1296 of 1995, the object of the provision is to ensure that the owner of the vehicle cannot escape by merely pointing out that he had no knowledge or connivance of the commission of the offence. As the owner of the vehicle, it is his responsibility to ensure that not only himself had taken care to see that the vehicle was not used for

any unauthorised purpose, the person in charge of the vehicle also did not allow it to be used or connived for such purpose.

25. Merely because, the Authorised Officer has not included the owner as an accused in the Forest case that by itself would not entitle the owner/financier to seek for release of he vehicle. Keeping in mind the definition of "owner" as defined under Section 2(30) of the Motor vehicles Act, 1988, in construing the provision of Section 49-B of the Tamil Nadu Forest Act, the financier cannot seek for release of the vehicle, solely on the ground that the vehicle used for transporting sandalwood, was without his knowledge or connivance. As rightly contended by the petitioner, if the findings of the appellate authority are to be accepted, then forest offenders and smugglers will purposefully hypothecate the vehicle to a financier and in such cases, the vehicle used in the commission of offence cannot be confiscated under the Forest Act. The financier is entitled to seek for release of the vehicle only when he discharges the burden under Section 49-B(2) of the Act with convincing evidence.

26. On going through the findings, it is evident that the appellate authority has misdirected itself to the extent of proof, which is required for the purpose of release of the vehicle. Proper scrutiny and consideration of relevant provision under Section 49(B) of the Act demonstrates that strong evidence is required to prove that the vehicle was used without the knowledge or connivance of the owner or his agent, if any, and person in charge of the vehicle. Burden is on each one of them i.e.,owner, his agent if any and the person in charge of the vehicle had taken reasonable and necessary precautions against such use of the vehicle. The object of the Forest Act in maintaining forest wealth, ecological balance and protection, could be achieved only when it is enforced in letter and spirit and Courts have to exercise their discretion in consonance with the object of the Statute. The learned Appellate Authority has given a narrow interpretation to Section 49-B of the Tamil Nadu Forest Act. The finding, rendered on the basis of the evidence collected during investigation supported by the confession statement of the registered owner of the vehicle, without there being any retraction and confirmed by the Transporter, cannot be assailed by the financier, in the absence of any appeal by the registered owner.

27. It is an admitted fact that the driver had involved himself in illegal transportation of sandalwood. When there is ample evidence to prove that the driver of the vehicle had not taken reasonable and necessary precautions against the use of the vehicle in the offence, provisio of Section 49B(2) of the Act is squarely attracted and confiscation ordered by the Authorised Officer is within the ambit of the provision. Courts/Forest Officials have to exercise their jurisdiction to achieve the object of the Act, and in the words of Supreme Court, liberal approach in the matter would perpetuate the commission of more offences. In the light of the above discussion, the reasons adduced by the appellate authority is not in conformity with the object of the statute and therefore, not tenable. The impugned order is liable to be set aside and accordingly, set aside.

28. In the result, the order of the Authorised Officer is restored and the Writ petition is allowed. No costs.

12.12.2007
skm
To
The Principal Sessions Judge,
Villupuram.

S. MANIKUMAR, J.

skm

W.P.NO.21798 OF 2000

12.12.2007